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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID HO, on behalf of himself and others
similarly situated and on behalf of the
general public and DOES 1-20

Plaintiff,

v.

ERNST & YOUNG LLP

Defendant.

Case No. CV 05-04867 JF

[Assigned for all purposes to the Honorable
Jeremy Fogel]

**DEFENDANT ERNST & YOUNG'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT [FRCP
56(B)]**

*[MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATION OF DARLA
HODAPP; DECLARATION OF CATHERINE
A. CONWAY FILED CONCURRENTLY
HEREWITH]*

Complaint Filed: September 27, 2005

Hearing Date: September 21, 2007
Hearing Time: 9:00 a.m.
Dept. 3

1 TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on September 21, 2007, at 9:00 am in Department 3 of the
3 above-entitled Court, located at 280 South 1st Street, San Jose, California 95113, Defendant Ernst &
4 Young LLP (“Ernst & Young”) will and does hereby move for summary judgment or, in the alternative,
5 partial summary judgment as to the claims of plaintiff David Ho (“Ho”).

6 This motion will be made pursuant to Federal Rule of Civil Procedure 56 on the ground that
7 there is no triable issue of material fact as to any of the causes of action alleged in Ho’s Complaint and
8 that Ernst & Young is entitled to summary judgment as a matter of law as to each of the following
9 issues:

- 10 1. While working at Ernst & Young, Ho was administratively exempt from California’s
11 overtime requirements because he:
- 12 a. performed non-manual work directly related to the general business operations of
 - 13 Ernst & Young and its clients;
 - 14 b. customarily and regularly exercised discretion and independent judgment;
 - 15 c. performed work along specialized or technical lines requiring special training,
 - 16 experience, or knowledge under only general supervision;
 - 17 d. was primarily engaged – or was expected to be primarily engaged – in exempt work;
 - 18 and
 - 19 e. earned a salary that exceeded twice the state minimum wage.
- 20 2. Ernst & Young is entitled to judgment as a matter of law because each of the claims in Ho’s
21 Class Action Complaint for Unpaid Overtime Wages rests on the premise that Ho was not
22 exempt from California’s overtime requirements.

23 This motion will be based on this Notice of Motion, Ernst & Young’s Memorandum of Points
24 and Authorities in Support of its Motion for Summary Judgment, the Declaration of Catherine A.
25 Conway in Support of Ernst & Young’s Motion for Summary Judgment and the exhibits attached
26 thereto, the Declaration of Daria Hodapp in Support of Ernst & Young’s Motion for Summary
27 Judgment and the exhibits attached thereto, any oral argument that may be presented at the hearing on
28 this motion and any other matter that the Court deems appropriate.

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2 Dated: July 5, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP
Catherine A. Conway
Gregory W. Knopp

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5 By  Catherine A. Conway

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7 Attorneys for Defendant Ernst & Young LLP
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067. On July 5, 2007, I served the foregoing document(s) described as: **DEFENDANT ERNST & YOUNG LLP'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** on the interested party(ies) below, using the following means:

All parties identified for Notice of Electronic Filing generated by the Court's CM/ECF system under the referenced case caption and number

☒ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 5, 2007 at Los Angeles, California.

Tracy Howe

[Print Name of Person Executing Proof]

[Signature]